

109TH CONGRESS  
1ST SESSION

# S. 1185

To protect United States workers from competition of foreign workforces  
for performance of Federal and State contracts.

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IN THE SENATE OF THE UNITED STATES

JUNE 7, 2005

Mr. DODD introduced the following bill; which was read twice and referred to  
the Committee on Homeland Security and Governmental Affairs

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## A BILL

To protect United States workers from competition of foreign  
workforces for performance of Federal and State contracts.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “United States Workers  
5       Protection Act of 2005”.

6       **SEC. 2. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**  
7       **CONTRACTS.**

8       (a) LIMITATIONS.—

9               (1) IN GENERAL.—The Office of Federal Pro-  
10       curement Policy Act (41 U.S.C. 403 et seq.) is

1       amended by adding at the end the following new sec-  
2       tion:

3       **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**  
4                   **CONTRACTS.**

5       “(a) CONVERSIONS TO CONTRACTOR PERFORMANCE  
6       OF FEDERAL ACTIVITIES.—An activity or function of an  
7       executive agency that is converted to contractor perform-  
8       ance under Office of Management and Budget Circular  
9       A-76 may not be performed by the contractor or any sub-  
10      contractor at a location outside the United States except  
11      to the extent that such activity or function was previously  
12      performed by Federal Government employees outside the  
13      United States.

14      “(b) OTHER FEDERAL CONTRACTS.—(1) A contract  
15      that is entered into by the head of an executive agency  
16      may not be performed outside the United States except  
17      to meet a requirement of the executive agency for the con-  
18      tract to be performed specifically at a location outside the  
19      United States.

20      “(2) The prohibition in paragraph (1) does not apply  
21      in the case of a contract of an executive agency if—

22              “(A) the President determines in writing that it  
23              is necessary in the national security interests of the  
24              United States for the contract to be performed out-  
25              side the United States; or

1           “(B) the head of such executive agency makes  
2           a determination and reports such determination on  
3           a timely basis to the Director of the Office of Man-  
4           agement and Budget that—

5                   “(i) the property or services needed by the  
6                   executive agency are available only by means of  
7                   performance of the contract outside the United  
8                   States; and

9                   “(ii) no property or services available by  
10                  means of performance of the contract inside the  
11                  United States would satisfy the executive agen-  
12                  cy’s need.

13          “(3) Paragraph (1) does not apply to the perform-  
14          ance of a contract outside the United States under the  
15          exception provided in subsection (a).

16          “(c) STATE CONTRACTS.—(1) Except as provided in  
17          paragraph (2), funds appropriated for financial assistance  
18          for a State may not be disbursed to or for such State dur-  
19          ing a fiscal year unless the chief executive of that State  
20          has transmitted to the Administrator for Federal Procure-  
21          ment Policy, not later than April 1 of the preceding fiscal  
22          year, a written certification that none of such funds will  
23          be expended for the performance outside the United States  
24          of contracts entered into by such State.

1       “(2) The prohibition on disbursement of funds to or  
2 for a State under paragraph (1) does not apply with re-  
3 spect to the performance of a State contract outside the  
4 United States if—

5           “(A) the chief executive of such State—

6               “(i) determines that the property or serv-  
7 ices needed by the State are available only by  
8 means of performance of the contract outside  
9 the United States and no property or services  
10 available by means of performance of the con-  
11 tract inside the United States would satisfy the  
12 State’s need; and

13               “(ii) transmits a notification of such deter-  
14 mination to the head of the executive agency of  
15 the United States that administers the author-  
16 ity under which such funds are disbursed to or  
17 for the State; and

18           “(B) the head of the executive agency receiving  
19 the notification of such determination—

20               “(i) confirms that the facts warrant the  
21 determination;

22               “(ii) approves the determination; and

23               “(iii) transmits a notification of the ap-  
24 proval of the determination to the Director of  
25 the Office of Management and Budget.

1       “(3) In this subsection, the term ‘State’ means each  
2 of the several States of the United States, the District  
3 of Columbia, the Commonwealth of Puerto Rico, the Com-  
4 monwealth of the Northern Mariana Islands, the Virgin  
5 Islands, Guam, American Samoa, and the Trust Territory  
6 of the Pacific Islands.

7       “(d) INAPPLICABILITY OF LIMITATIONS.—The limi-  
8 tations in subsections (b) and (c) shall not apply to pro-  
9 curement covered by the Agreement on Government Pro-  
10 curement of the World Trade Organization (as described  
11 in section 101(d)(17) of the Uruguay Round Agreement  
12 Act (19 U.S.C. 3511(d)(17))).

13       “(e) RESPONSIBILITIES OF OMB.—The Director of  
14 the Office of Management and Budget shall—

15               “(1) maintain—

16                       “(A) the waivers granted under subsection  
17                       (b)(2), together with the determinations and  
18                       certifications on which such waivers were based;  
19                       and

20                       “(B) the notifications received under sub-  
21                       section (c)(2)(B)(iii); and

22               “(2) submit to Congress promptly after the end  
23 of each quarter of each fiscal year a report that sets  
24 forth—

1 “(A) the waivers that were granted under  
2 subsection (b)(2) during such quarter; and

3 “(B) the notifications that were received  
4 under subsection (c)(2)(B)(iii) during such  
5 quarter.

6 “(f) ANNUAL GAO REVIEW.—The Comptroller Gen-  
7 eral shall—

8 “(1) review, each fiscal year, the waivers grant-  
9 ed during such fiscal year under subsection (b)(2)  
10 and the disbursements of funds authorized pursuant  
11 to the exception in subsection (c)(2); and

12 “(2) promptly after the end of such fiscal year,  
13 transmit to Congress a report containing a list of  
14 the contracts covered by such waivers and exception  
15 together with a brief description of the performance  
16 of each such contract outside the United States.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-  
18 tions in section 1(b) of such Act is amended by add-  
19 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

20 (b) INAPPLICABILITY TO STATES DURING FIRST  
21 TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-  
22 eral Procurement Policy Act (as added by subsection (a))  
23 shall not apply to disbursements of funds to a State dur-  
24 ing the fiscal year in which this Act is enacted and the  
25 next fiscal year.

1   **SEC. 3. REPEAL OF SUPERSEDED LAW.**

2           Section 647 of the Transportation, Treasury, and  
3   Independent Agencies Appropriations Act, 2004 (division  
4   F of Public Law 108–199) is amended by striking sub-  
5   section (e).

6   **SEC. 4. EFFECTIVE DATE AND APPLICABILITY.**

7           This Act and the amendments made by this Act shall  
8   take effect 30 days after the date of the enactment of this  
9   Act and, subject to subsection (b) of section 2, shall apply  
10   with respect to new contracts entered into on or after such  
11   date.

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